City of Brisbane
Agenda Report

TO: Honorable Mayor and City Council

FROM: Community Development Director via City Manager

SUBJECT: **Ordinance No. 608**, Text Amendment to Title 17 of the Brisbane Municipal Code (BMC) regarding massage establishments, to distinguish massage establishments as separate from other personal services and to specify in which zoning districts massage establishments may be allowed and to Section 8.10.100 of the Brisbane Municipal Code concerning operating requirements of massage establishments.

DATE: Meeting of July 14, 2016

City Council Goals:

To provide public service that assures the safety of property and citizens residing, working or visiting in Brisbane. (Goal #9)

Purpose:

To establish land use regulations that distinguish massage establishments as separate from other personal services and establish greater regulatory control over massage establishments and to revise the operating requirements of massage establishments.

Recommendation:

That the City Council approve zoning text amendment RZ-2-16 and introduce Ordinance No. 608.

Background:

In 2014, City Council adopted comprehensive operational regulations concerning massage establishments under BMC Chapter 8.10. These regulations were intended to provide the City some operational control over massage establishments, since the State at that time preempted local zoning regulations specific to massage establishments. Subsequently, the state adopted AB 1147 which restored local land use authority over massage establishments.

The Police Department has raised the concern that there have been abuses in other communities, where massage establishments have operated as a cover for illegal activities and requested consideration of land use regulations as an additional tool to regulate massage establishments. In July 2015, City Council adopted a resolution of intention initiating an amendment to the zoning ordinance regarding massage establishments. On March 24, 2016 the Planning Commission considered and adopted Resolution RZ-2-16 recommending City Council adoption of the attached zoning text amendment.

In addition, when the City Council adopted its resolution of intention concerning amendments to the zoning ordinance, Council member Liu requested that the City Council consider amending the operating requirements of massage establishments to require that these establishments post signs concerning human trafficking. The attached ordinance includes proposed revisions to BMC Section 8.10.to address this request.

Discussion:

The proposed amendment to Title 17 (Zoning Ordinance) does the following:

1. Defines massage as distinct from other personal services;

2. Allow massage establishments as a conditional use in commercial and mixed use zoning districts, where other personal services may otherwise be permitted as a matter of right; and

3. Prohibit massage establishments as home occupations except as home offices for out-call services.

These proposed changes are discussed in detail in the attached March 24, 2014 Planning Commission report.

California Civil Code, section 52,6 provides that certain businesses post a notice in a conspicuous place near the public entrance of the business that informs persons who are being forced to engage in any activity, including commercial sex, and cannot leave, to call the National Human Trafficking Resource Center or the California Coalition to Abolish Slavery or Trafficking. The notice must have the phone numbers of these organizations and provides other information. Among the businesses required to post this notice are businesses that offer massage for compensation.

Section 8.10.100 of the Brisbane Municipal Code sets forth numerous operating requirements for massage establishments, such as exterior signs, displays of Registration Certificates, where payments for services must be made, standard of dress for massage therapists, etc.

Currently, however, the requirement of posting the notice under section 52.6 of the Civil Code is not set forth in Section 8.10.100. Proposed Ordinance No. 608 would amend Section 8.10.100 to

impose this requirement. This portion of the Ordinance did not need to be reviewed by the Planning Commission since this is a regulatory, not a land use, issue

Fiscal Impact:

There would be no anticipated fiscal impact to the City resulting from this ordinance.

Measures of Success:

To provide appropriate land use and regulatory control of massage establishments as previously directed by the City Council.

Attachments:

- Draft City Council Ordinance No. 608
- Redlined Draft of Amendments
- Planning Commission Resolution No RZ-2-16
- Planning Commission Minutes of March 24, 2016
- Planning Commission Agenda Report of March 24, 2016

John Swiecki, Community Development Director

Clay Holstine, City Manager

DRAFT ORDINANCE NO. 608

AN ORDINANCE OF THE CITY OF BRISBANE ADDING SECTIONS 17.02.517 AND 17.44.025, AND AMENDING SECTIONS 17.02.610, 17.14.030, 17.14.040, 17.16.030, 17.18.030, 17.19.030 AND 17.24.030 OF THE MUNICIPAL CODE MODIFYING AND ADDING DEFINITIONS TO DISTINGUISH MASSAGE FROM PERSONAL SERVICES, MODIFYING CONDITIONAL USE PROVISIONS TO INCLUDE MASSAGE IN VARIOUS COMMERCIAL AND MIXED USE DISTRICTS, AND PROHIBITING MASSAGE AS A HOME OCCUPATION AND AMENDING SECTION 8.10.100 OF THE MUNICIPAL CODE REQUIRING THAT NOTICES CONCERNING HUMAN TRAFFICKING BE POSTED IN MASSAGE ESTABLISHMENTS

The City Council of the City of Brisbane hereby ordains as follows:

SECTION 1: Section 17.02.517 of Chapter 17.02, Definitions, is added to read as follows:

§17.02.517 – Massage establishments.
"Massage establishments" are defined in BMC Chapter 8.10.030.

SECTION 2: Section 17.02.610 of Chapter 17.02, Definitions, is amended to read as follows:

§17.02.610 - Personal services.

"Personal services" means services of a personal convenience nature involving the care of an individual or his or her personal goods or apparel, including, but not limited to, barber and beauty shops, shoe, luggage and small appliance repair, photographers, laundry and drop-off cleaning services, copying, repair and alteration of clothes and similar services. The term also includes personal services rendered by a tradesperson or contractor, such as a plumber, electrician or heating and cooling equipment contractor, including the incidental storage of materials, supplies, products, parts and other items of personal property related to the furnishing of such services. Services provided to a commercial establishment would not usually be classified as personal services. For the purposes of this Title, personal services does not include massage establishments.

SECTION 3: Section 17.14.030 of Chapter 17.14, Neighborhood Commercial District NCRO-1 Brisbane Village District, is amended to read as follows:

§17.14.030 - Conditional uses in the NCRO-1 district.

The following conditional uses are allowed in the NCRO-1 district, subject to obtaining a use permit and if conducted in accordance with the performance standards set forth in Section 17.14.070 of this chapter:

A. Bars.

B. Commercial recreation-commercial gym and health facilities.

C. Cultural facilities.

D. Educational facilities.

E. Gasoline service stations.

F. Massage establishments.

G. Meeting halls.

H. Outdoor sales and rental, when associated with an adjacent use within a structure.

I. Places of worship.

J. Temporary uses.

K. Veterinary clinics.

L. Day care centers.

SECTION 4: Section 17.14.040 of Chapter 17.14, Neighborhood Commercial District NCRO-2 Downtown Brisbane District, is amended to read as follows:

§17.14.040 - Conditional uses in the NCRO-2 district.

The following conditional uses are allowed in the NCRO-2 District, subject to obtaining a use permit and if conducted in accordance with the performance standards set forth in Section 17.14.070 of this chapter:

A. Bars.

B. Commercial recreation-commercial gym and health facilities.

C. Cultural facilities.

D. Educational facilities.

E. Massage establishments.

F. Meeting halls.

G. Mixed use in single-family dwellings.

H. Outdoor sales and rental, when associated with an adjacent use within a structure.

I. Places of worship.

J. Small family day care homes.

K. Temporary uses.

L. Veterinary clinics.

M. The following conditional uses are allowed only when part of a mixed-use and when located above or behind nonresidential uses:

1. Day care centers.
2. Dwelling units.
3. Family day care homes.
4. Group care homes.

SECTION 5: Section 17.16.030 of Chapter 17.16, SCRO-1 Southwest Bayshore Commercial District, is amended to read as follows:

§17.16.030 - Conditional uses.

A. Allowable Conditional Uses. The following conditional uses, not otherwise permitted per Section 17.16.020(A), may be allowed in the Southwest Bayshore district, upon the granting of a use permit pursuant to Chapter 17.40 of this title and if conducted in accordance with the performance standards set forth in Section 17.16.050 of this chapter:

1. Commercial recreation/commercial gym and health facilities;
2. Contractor's yards;
3. Convalescent homes;
4. Cultural facilities;
5. Duplex dwelling units;
6. Educational facilities;
7. Emergency shelters with more than twelve (12) beds;
8. Financial institutions;
9. Food production;
10. Group care homes;
11. Hotels;
12. Large family day care homes;
13. Light fabrication;
14. Live/work developments;
15. Massage establishments;
16. Media studios;
17. Medical facilities;
18. Meeting halls;
19. Mobilehome parks in compliance with Section 17.32.110;
20. Motels;
21. Multiple-family dwellings and dwelling groups;
22. Offices;
23. Outdoor sales and rental;

24. Personal services;
25. Places of worship;
26. Printing;
27. Product showrooms;
28. Research and development, where the planning director determines, as a result of a risk analysis performed in accordance with Policy No. 166.1 of the general plan, that the use of hazardous materials will not constitute a major component of the research and development activities to be conducted on the site;
29. Restaurants;
30. Retail sales and rental;
31. Single-family dwellings;
32. Storage;
33. Veterinary clinics;
34. Warehousing;

B. Mixed Uses. A combination of any residential and nonresidential uses listed in subsection A of this section, or in Section 17.16.020, may be allowed as a mixed use within the same structure or upon the same site when specifically authorized by the use permit granted for each individual conditional use and upon such additional conditions as the approving authority may deem necessary or appropriate to insure the compatibility of such mixed uses.

C. Night Operations. Night operations associated with the conduct of any uses listed in subsection A of this section (except residential uses) shall require a use permit when subject to the provisions of Section 17.16.070 of this chapter.

SECTION 6: Section 17.18.030 of Chapter 17.18, the SP-CRO Sierra Point Commercial District, is amended to read as follows:

§17.18.030 - Conditional uses.

The following conditional uses may be allowed in the SP-CRO district, upon the granting of a use permit pursuant to Chapter 17.40 of this title:

A. Child care centers when:

1. Located more than five hundred (500) feet from the edge of the eastern-most lane of the Bayshore Freeway (U.S. 101);
2. Located within an area with a community noise equivalent level (CNEL) of not more than sixty (60) dB as determined by a professionally-prepared acoustical analysis report; or located within an area with a community noise equivalent level (CNEL) of sixty to eighty (60—80) dB and designed with the noise insulation features identified in a professionally-prepared acoustical analysis report so as to comply with Figure 2 in Appendix C of the state of California General Plan Guidelines 2003; and

3. Designed and operated so to comply with the noise levels specified in Brisbane Municipal Code Section 8.28.040, as per the recommendations of a professionally-prepared acoustical analysis report.

B. Massage establishments.

C. Medical facilities.

D. Commercial recreation.

E. Transit/transportation facilities.

F. Temporary uses.

SECTION 7: Section 17.19.030 of Chapter 17.19, the TC-1 Crocker Park Trade Commercial District, is amended to read as follows:

§17.19.030 - Conditional uses.

Conditional uses allowed in the Crocker Park district, subject to obtaining a use permit and if conducted in accordance with the performance standards set forth in Section 17.19.050 of this chapter, are as follows:

A. Active records management services;

B. Commercial recreation;

C. Cultural facilities;

D. Day care centers when ancillary to other operation of another use;

E. Educational facilities;

F. Freight forwarders, subject to compliance with the provisions of Section 17.19.065 of this chapter;

G. Gasoline service stations;

H. Massage establishments;

I. Medical facilities;

J. Meeting halls;

K. Night operations, when subject to the provisions of Section 17.19.060 of this chapter;

L. Places of worship;

M. Research and development where the planning director determines, as a result of the risk analysis performed in accordance with Policy No. 166.1 of the general plan, that the use of hazardous materials will constitute a major component of the research and development activities to be conducted on the site;

N. Temporary uses;

O. Veterinary clinics.

SECTION 8: Section 17.24.030 of Chapter 17.24, the MLB Marsh Lagoon Bayfront District, is amended to read as follows:

§17.24.030 - Conditional uses.

The following conditional uses may be allowed in the MLB district, upon the granting of a use permit pursuant to Chapter 17.40 of this title and subject to the additional requirement that such uses must be water-oriented and necessarily conducted within or adjacent to aquatic or riparian areas:

A. Commercial recreation.

B. Massage establishments.

C Personal services.

D. Retail sales and rental.

E. Educational facilities.

F. Scientific research.

G. Habitat restoration and wildlife protection.

H. Transit/transportation facilities.

I. Marinas.

SECTION 9: Section 17.44.025 of Chapter 17.44, Home Occupations, is added to read as follows:

§17.44.025 Prohibited Uses. Massage establishments are prohibited, except that home offices for out-call massage services may be permitted when operated in compliance with the other provisions of this Chapter and Section 8.10.130 of this Code.

SECTION 10. Section 8.10.100 (Operating Requirements) of Chapter 8.10 (Massage Establishments) is amended to read as follows:

"Section 8.10.100 Operating requirements.

Unless otherwise specified herein, all massage establishments shall comply with the following operating requirements.

(Subsections A-J, no change.)

K. Each massage establishment shall post the notice required to be posted under State Civil Code, section 52.6 (concerning human trafficking and slavery)."

* * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2016, by the following vote:

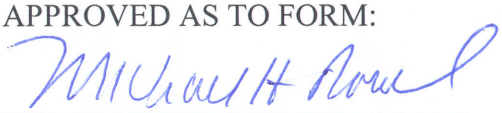
AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:



_____
City Attorney

REDLINED ZONING TEXT AMENDMENTS FOR DRAFT ORDINANCE NO. 608

SECTION 1: Section 17.02.517 of Chapter 17.02, Definitions, is added to read as follows:

§17.02.517 – Massage establishments.
"Massage establishments" are defined in BMC Chapter 8.10.030.

SECTION 2: Section 17.02.610 of Chapter 17.02, Definitions, is amended to read as follows:

§17.02.610 - Personal services.

"Personal services" means services of a personal convenience nature involving the care of an individual or his or her personal goods or apparel, including, but not limited to, barber and beauty shops, shoe, luggage and small appliance repair, photographers, laundry and drop-off cleaning services, copying, repair and alteration of clothes and similar services. The term also includes personal services rendered by a tradesperson or contractor, such as a plumber, electrician or heating and cooling equipment contractor, including the incidental storage of materials, supplies, products, parts and other items of personal property related to the furnishing of such services. Services provided to a commercial establishment would not usually be classified as personal services. For the purposes of this Title, personal services does not include massage establishments.

SECTION 3: Section 17.14.030 of Chapter 17.14, Neighborhood Commercial District NCRO-1 Brisbane Village District, is amended to read as follows:

§17.14.030 - Conditional uses in the NCRO-1 district.

The following conditional uses are allowed in the NCRO-1 district, subject to obtaining a use permit and if conducted in accordance with the performance standards set forth in Section 17.14.070 of this chapter:

A. Bars.

B. Commercial recreation-commercial gym and health facilities.

C. Cultural facilities.

D. Educational facilities.

E. Gasoline service stations.

F. Massage establishments.

G. Meeting halls.

~~G.~~ H. Outdoor sales and rental, when associated with an adjacent use within a structure.

~~H.~~ I. Places of worship.

~~I.~~ J. Temporary uses.

~~J.~~ K. Veterinary clinics.

~~K.~~ L. Day care centers.

SECTION 4: Section 17.14.040 of Chapter 17.14, Neighborhood Commercial District NCRO-2 Downtown Brisbane District, is amended to read as follows:

§17.14.040 - Conditional uses in the NCRO-2 district.

The following conditional uses are allowed in the NCRO-2 District, subject to obtaining a use permit and if conducted in accordance with the performance standards set forth in Section 17.14.070 of this chapter:

A. Bars.

B. Commercial recreation-commercial gym and health facilities.

C. Cultural facilities.

D. Educational facilities.

E. Massage establishments.

F. Meeting halls.

~~F.~~ G. Mixed use in single-family dwellings.

~~G.~~ H. Outdoor sales and rental, when associated with an adjacent use within a structure.

~~H.~~ I. Places of worship.

~~I.~~ J. Small family day care homes.

~~J.~~ K. Temporary uses.

~~K.~~ L. Veterinary clinics.

~~L.~~ M. The following conditional uses are allowed only when part of a mixed-use and when located above or behind nonresidential uses:

1. Day care centers.

2. Dwelling units.

3. Family day care homes.

4. Group care homes.

SECTION 5: Section 17.16.030 of Chapter 17.16, SCRO-1 Southwest Bayshore Commercial District, is amended to read as follows:

§17.16.030 - Conditional uses.

A. Allowable Conditional Uses. The following conditional uses, not otherwise permitted per Section 17.16.020(A), may be allowed in the Southwest Bayshore district, upon the granting of a use permit pursuant to Chapter 17.40 of this title and if conducted in accordance with the performance standards set forth in Section 17.16.050 of this chapter:

1. Commercial recreation/commercial gym and health facilities;

2. Contractor's yards;

3. Convalescent homes;

4. Cultural facilities;

5. Duplex dwelling units;

6. Educational facilities;

7. Emergency shelters with more than twelve (12) beds;

8. Financial institutions;

9. Food production;

10. Group care homes;

11. Hotels;

12. Large family day care homes;

13. Light fabrication;

14. Live/work developments;

15. Massage establishments;

16. Media studios;

~~16.~~ 17. Medical facilities;

~~17.~~ 18. Meeting halls;

~~18.~~ 19. Mobilehome parks in compliance with Section 17.32.110;

~~19.~~ 20. Motels;

~~20.~~ 21. Multiple-family dwellings and dwelling groups;

~~21.~~ 22. Offices;

~~22.~~ 23. Outdoor sales and rental;

~~23.~~ 24. Personal services;

~~24.~~ 25. Places of worship;

~~25.~~ 26. Printing;

~~26.~~ 27. Product showrooms;

~~27.~~ 28. Research and development, where the planning director determines, as a result of a risk analysis performed in accordance with Policy No. 166.1 of the general plan, that the use of hazardous materials will not constitute a major component of the research and development activities to be conducted on the site;

~~28.~~ 29. Restaurants;

~~29.~~ 30. Retail sales and rental;

~~30.~~ 31. Single-family dwellings;

~~31.~~ 32. Storage;

~~32.~~ 33. Veterinary clinics;

~~33.~~ 34. Warehousing;

B. Mixed Uses. A combination of any residential and nonresidential uses listed in subsection A of this section, or in Section 17.16.020, may be allowed as a mixed use within the same structure or upon the same site when specifically authorized by the use permit granted for each individual conditional use and upon such additional conditions as the approving authority may deem necessary or appropriate to insure the compatibility of such mixed uses.

C. Night Operations. Night operations associated with the conduct of any uses listed in subsection A of this section (except residential uses) shall require a use permit when subject to the provisions of Section 17.16.070 of this chapter.

SECTION 6: Section 17.18.030 of Chapter 17.18, the SP-CRO Sierra Point Commercial District, is amended to read as follows:

§17.18.030 - Conditional uses.

The following conditional uses may be allowed in the SP-CRO district, upon the granting of a use permit pursuant to Chapter 17.40 of this title:

A. Child care centers when:

1. Located more than five hundred (500) feet from the edge of the eastern-most lane of the Bayshore Freeway (U.S. 101);

2. Located within an area with a community noise equivalent level (CNEL) of not more than sixty (60) dB as determined by a professionally-prepared acoustical analysis report; or located within an area with a community noise equivalent level (CNEL) of sixty to eighty (60– 80) dB and designed with the noise insulation features identified in a professionally-prepared acoustical analysis report so as to comply with Figure 2 in Appendix C of the state of California General Plan Guidelines 2003; and

3. Designed and operated so to comply with the noise levels specified in Brisbane Municipal Code Section 8.28.040, as per the recommendations of a professionally-prepared acoustical analysis report.

~~B.~~ B. Massage establishments.

C. Medical facilities.

~~C.~~ D. Commercial recreation.

~~D.~~ E. Transit/transportation facilities.

~~E.~~ F. Temporary uses.

SECTION 7: Section 17.19.030 of Chapter 17.19, the TC-1 Crocker Park Trade Commercial District, is amended to read as follows:

§17.19.030 - Conditional uses.

Conditional uses allowed in the Crocker Park district, subject to obtaining a use permit and if conducted in accordance with the performance standards set forth in Section 17.19.050 of this chapter, are as follows:

A. Active records management services;

B. Commercial recreation;

C. Cultural facilities;

D. Day care centers when ancillary to other operation of another use;

E. Educational facilities;

F. Freight forwarders, subject to compliance with the provisions of Section 17.19.065 of this chapter;

G. Gasoline service stations;

H. Massage establishments;

I. Medical facilities;

~~I.~~ J. Meeting halls;

~~J.~~ K. Night operations, when subject to the provisions of Section 17.19.060 of this chapter;

~~K.~~ L. Places of worship;

~~L.~~ M. Research and development where the planning director determines, as a result of the risk analysis performed in accordance with Policy No. 166.1 of the general plan, that the use of hazardous materials will constitute a major component of the research and development activities to be conducted on the site;

~~M.~~ N. Temporary uses;

~~N.~~ O. Veterinary clinics.

SECTION 8: Section 17.24.030 of Chapter 17.24, the MLB Marsh Lagoon Bayfront District, is amended to read as follows:

§17.24.030 - Conditional uses.

The following conditional uses may be allowed in the MLB district, upon the granting of a use permit pursuant to Chapter 17.40 of this title and subject to the additional requirement that such uses must be water-oriented and necessarily conducted within or adjacent to aquatic or riparian areas:

A. Commercial recreation.

B. Massage establishments.

C Personal services.

~~C.~~ D. Retail sales and rental.

~~D.~~ E. Educational facilities.

~~E.~~ F. Scientific research.

~~F.~~ G. Habitat restoration and wildlife protection.

~~G.~~ H. Transit/transportation facilities.

~~H.~~ I. Marinas.

SECTION 9: Section 17.44.025 of Chapter 17.44, Home Occupations, is added to read as follows:

§17.44.025 Prohibited Uses. Massage establishments are prohibited, except that home offices for out-call massage services may be permitted when operated in compliance with the other provisions of this Chapter and Section 8.10.130 of this Code.

SECTION 10. Section 8.10.100 (Operating Requirements) of Chapter 8.10 (Massage Establishments) is amended to read as follows:

"Section 8.10.100 Operating requirements.

Unless otherwise specified herein, all massage establishments shall comply with the following operating requirements.

(Subsections A-J, no change.)

K. Each massage establishment shall post the notice required to be posted under State Civil Code, section 52.6 (concerning human trafficking and slavery)."

RESOLUTION NO. RZ-2-16

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BRISBANE RECOMMENDING ZONING TEXT AMENDMENT RZ-2-16 TO THE CITY COUNCIL, SUCH AMENDMENTS PERTAINING TO THE DEFINITION OF PERSONAL SERVICES AND MASSAGE ESTABLISHMENTS, NEW REQUIREMENTS FOR CONDITIONAL USE PERMITS FOR MASSAGE ESTABLISHMENTS IN VARIOUS COMMERCIAL ZONING DISTRICTS, AND HOME OCCUPATION LIMITATIONS FOR MASSAGE ESTABLISHMENTS

WHEREAS, the City has authority over the land uses within its boundaries, which is affirmed in the 1994 General Plan, Land Use Element Policy 12 which states, "Establish a mix of land uses that best serves the needs of the community"; and

WHEREAS, the City Council adopted the Massage Regulations, Ordinance No. 585, in 2014, which defines massage establishments and has comprehensive operational regulations concerning massage establishments; and

WHEREAS, State Assembly Bill AB 1147 allows for local land use authority over massage establishments; and

WHEREAS, via adoption of Resolution No. 2015-34, the City Council directed the Planning Commission to provide a recommendation regarding the land use regulation of massage establishments; and

WHEREAS, under the city's zoning Ordinance massage establishments are permitted uses (as a personal service) in certain zoning districts, including the Crocker Park, Sierra Point, Southwest Bayshore, Marsh Lagoon Bayshore and Neighborhood Commercial (Brisbane Village and Downtown) districts; and

WHEREAS, in other communities certain massage establishments have operated as a cover for illegal activities; and

WHEREAS, by defining massage establishments as a distinct use from other types of personal services and requiring prospective massage establishments to obtain a conditional use permit, the City would have stronger land use controls over such uses; and

WHEREAS, defining massage establishments and allowing them by conditional use permit in commercial zoning districts where they have previously been either allowed by conditional use permit under the broader category of personal services or by-right as a permitted use is consistent with the General Plan designations and existing zoning in those districts; and

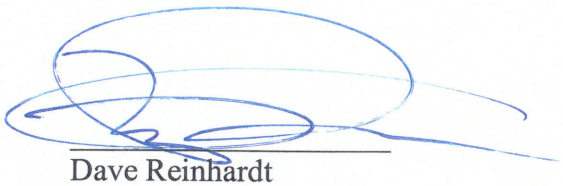
WHEREAS, by prohibiting massage establishments as home occupations, except as may be allowed for out-call services, the City would maintain consistency with the Massage Regulations Ordinance; and

WHEREAS, the Planning Commission duly noticed and held a public hearing on the proposed amendments on March 24, 2016, at which time oral and written comments were considered; and

WHEREAS, the Planning Commission finds that the proposed action is consistent with the City's General Plan and per State CEQA Guidelines Section 15183(a) – this proposal falls within a class of projects which are consistent with existing zoning or general plan policies for which an EIR was certified and shall therefore not require further review, and the exception to this section requiring environmental review as might be necessary to examine project specific significant effects does not apply.

NOW, THEREFORE BE IT RESOLVED, that based on the above findings, the Planning Commission hereby recommends adoption of Zoning Text Amendment RZ-2-16, attached as Exhibit A, to the City Council.

AYES: Anderson, Munir and Reinhardt
ABSENT: Do and Parker



Dave Reinhardt
Acting Chairman

ATTEST:

_____
JOHN A. SWIECKI, Community Development Director

Due to lack of a quorum, the Commission agreed to continue the item to the regular meeting of April 14, 2016 at a special 7 p.m. start time.

2. **PUBLIC HEARING: 80 Plumas Street, 108 and 118 Mariposa Street (formerly 60 Plumas Street); Use Permit UP-2-13;** Condominium Plan approval for previously approved triplex, now under construction on a 5,000 square foot lot; James Seto, applicant; James, Saovanh, Robert, and Amy Seto, owners; APN 007-223-010

Senior Planner Johnson gave the agenda report. Acting Chairperson Reinhardt opened the public hearing.

Applicant/owner James Seto answered questions regarding the timing of the application.

Commissioner Anderson moved to close the public hearing. Commissioner Munir seconded and the motion was approved 3-0. Commissioner Anderson moved approval of Resolution UP-2-13, seconded by Commissioner Munir and approved 3-0.

3. **PUBLIC HEARING: Zoning Text Amendment RZ-2-16;** Proposal to modify and add provisions to Title 17 regarding massage establishments, to distinguish massage establishments as separate from other personal services and specify zoning districts and procedures by which massage establishments may be allowed; City-wide; Applicant, City of Brisbane.

Senior Planner Johnson gave the agenda report. He answered the Commissioners' questions regarding implications for existing businesses.

There being no one present in the audience, Commissioner Munir moved to open and close the public hearing. Commissioner Anderson seconded and the motion was approved 3-0. Commissioner Munir moved adoption of Resolution RZ-2-16 recommending City Council approval of the draft ordinance. The motion was seconded by Commissioner Anderson and approved 3-0.

H. ITEMS INITIATED BY STAFF

Director Swiecki announced the fiscal analysis would be reviewed at the Baylands deliberation meeting on April 14, 2016.

I. ITEMS INITIATED BY THE COMMISSION

Acting Chairperson Reinhardt read the appeals process.

J. ADJOURNMENT to the Regular Meeting of April 14, 2016 at 7:00 p.m.

City of Brisbane
Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 3/24/16

FROM: Ken Johnson, Senior Planner, via John A. Swiecki, Community Development Director

SUBJECT: RZ-2-16 Zoning Text Amendment to modify and add provisions to Title 17 regarding massage establishments, to distinguish massage establishments as separate from other personal services and to specify in which zoning districts massage establishments may be allowed; City-wide; Applicant, City of Brisbane.

Request: The request is to revise the Brisbane Municipal Code (BMC), Title 17, to distinguish massage establishments as separate from other personal services and to require conditional use permits for massage establishments rather than allowing them by right, as permitted uses. Also, the proposed amendment would prohibit massage establishments as home occupations, except as home offices for out-call services.

Recommendation: Planning Commission adoption of Resolution RZ-2-16 is recommended, which provides a recommendation to City Council of adoption of the draft ordinance, adding and amending provisions regarding massage establishments in various sections of Title 17 as described in this agenda report.

Environmental Determination: The action is consistent with the City's General Plan. Per State CEQA Guidelines Section 15183(a) – this proposal falls within a class of projects which are consistent with existing zoning or general plan policies for which an EIR was certified and shall therefore not require further review. The exception to this section requiring environmental review as might be necessary to examine project specific significant effects does not apply.

Background: In 2014, City Council adopted comprehensive operational regulations concerning massage establishments, as BMC Chapter 8.10. The regulations were not land use regulations, since, at that time, the State had preempted most of the local land use regulations applicable to massage establishments. However, after the ordinance was adopted, the state adopted AB 1147 which restored local land use authority concerning massage establishments.

The Police Department has raised the concern that there have been abuses in other communities, where massage establishments have operated as a cover for illegal activities and requested more stringent land use regulations to provide additional tools to regulate them. In July 2015, City Council adopted a resolution of intention to initiate an amendment to the zoning ordinance regarding massage establishments to require a conditional use permit in order to operate in Brisbane's commercial zoning districts (see the attached City Council Resolution).

Discussion: Historically massage establishments have been recognized by the City as "personal services" which are defined in BMC Section 17.02.610. Personal services are currently allowed as permitted uses in most of the City's commercial zoning districts.

Under the current ordinance, massage establishments may also be permitted as home occupations as long as certain performance standards can be met, as detailed in BMC Section 17.44.040. For home occupation applications all uses are currently reviewed relative to performance standards rather than against a prescribed list of permitted or conditional uses.

The proposed amendment would do three things. It would 1) define massage as distinct from other personal services, 2) it would allow massage establishments only as a conditional use in commercial zoning districts, and 3) it would prohibit massage establishments as home occupations except as home offices for out-call services.

Definitions: By separating massage as a distinct use from personal services, defined separately, the zoning ordinance would regulate massage establishments separately from other personal service land uses. Other personal services may continue as permitted uses where applicable without being affected by this ordinance.

Also, since the Massage Regulations provided in BMC Chapter 8.10 includes a definition of massage establishments, , the definitions section within Title 17 would simply cross reference the existing definition in Chapter 8.10, in order to avoid internal code conflict or redundancy. The specific amendment text relating to the definitions are provided with the attached draft resolution.

Permitted vs. Conditional Uses: Given the proposed change in definition of personal services, it would also be necessary to specify the districts where massage establishments would be conditionally allowed going forward. Those zoning districts throughout the City where personal services are currently allowed, either as permitted uses or conditional uses, have been identified as follows:

1. NCRO-1 Neighborhood Commercial District Brisbane Village
2. NCRO-2 Neighborhood Commercial District Downtown Brisbane
3. SCRO-1 Southwest Bayshore Commercial District
4. SP-CRO Sierra Point Commercial District
5. TC-1 Crocker Park Trade Commercial District
6. MLB Marsh Lagoon Bayfront District

For each of these zoning districts the regulations would be amended to identify massage establishments as being allowed by conditional use permit. Thus the amendments proposed would not eliminate the potential for massage establishments in any of the districts where they are currently allowed, but would impose the requirement for a conditional use permit prior to obtaining a business license for new prospective businesses, rather than being permitted by right. Businesses that have already been legally established prior to the effective date of the ordinance may maintain their business consistent with BMC Chapter 17.38, Nonconforming Uses and

Structures, and the prescriptive operational requirements of BMC Chapter 8.10, Massage Regulations.

Home Occupations: The Home Occupations Ordinance, BMC Chapter 17.44, does not currently specify any permitted or conditional uses. Rather, all business license applications for home occupations are reviewed by the Planning Director based on their stated ability to comply with the required performance standards, per BMC Section 17.44.040. However, the prescriptive nature of the massage ordinance, with specific operating requirements, raises concerns over the City's ability to enforce these requirements in a person's home. Therefore, it is recommended that massage establishments be prohibited as home occupations, except that home offices for out-call massage services may be permitted. Thus the amendment would add a new section with this prohibition. Note that out-call services are allowed for certified massage therapists/practitioners per the Massage Ordinance, BMC Section 8.10.130, so the proposed amendment is consistent with Section 8.10.130.

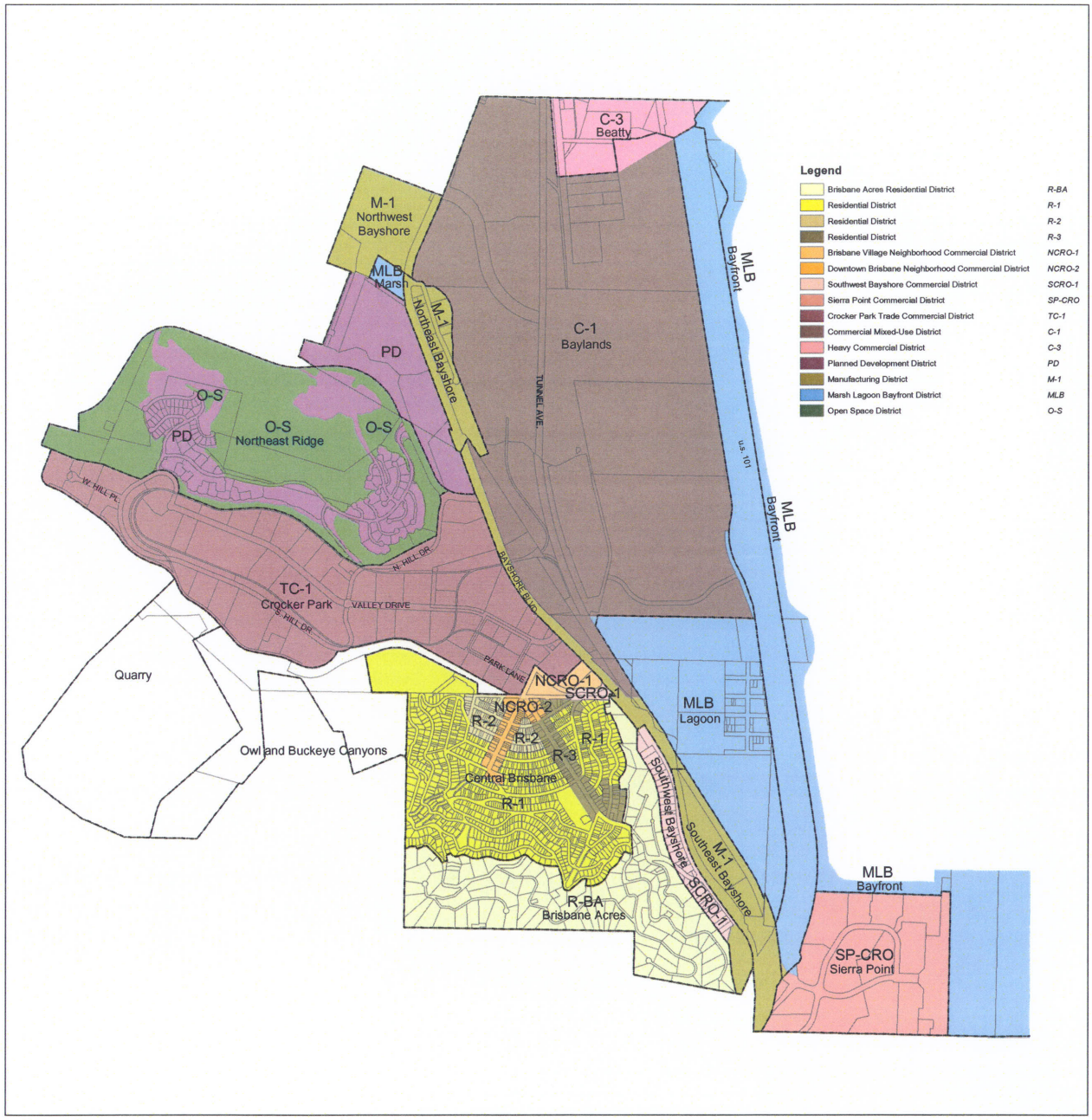
Finally, the draft ordinance has been drafted with input from the City Attorney and Police Department and it addresses the Police Department concerns that were raised to City Council.

Attachments:

1. Zoning Map
2. ~~Redline/Strike-out of Proposed Title 17 amendments~~ Provided separately
3. ~~Draft Resolution RZ-2-16 and Exhibit A, Draft Ordinance~~ Adopted resolution provided
4. City Council Resolution 2015-34 and City Council Report, dated June 16, 2015
5. Home Occupation Ordinance excerpt, BMC Section 17.44.040
6. Massage Ordinance, BMC Chapter 8.10

Zoning Map

City of Brisbane



LSA

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MILES

Revised: May 16, 1988
Revised: May 29, 1992
Revised: April 1996
Revised: February 2000
Revised: February 2002
Revised: July 2003

THE CITY OF STARS
BRISBANE
CALIFORNIA

I:\BR1430\GIS\Maps\Zoning (PosterD)_4.mxd (10/8/04)

RESOLUTION NO. 2015-34

A RESOLUTION OF INTENTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE TO INITIATE AN AMENDMENT TO THE ZONING ORDINANCE OF THE CITY OF BRISBANE TO REQUIRE MASSAGE ESTABLISHMENTS INTENDING TO LOCATE IN A COMMERCIAL ZONING DISTRICT TO OBTAIN A CONDITIONAL USE PERMIT

WHEREAS, Section 17.50.010 of the Brisbane Municipal Code provides in part that the process to initiate an amendment to the Zoning Ordinance whereby a new regulation would be imposed on property is by the filing of a resolution of intention by the City Council; and

WHEREAS, under the City's Zoning Ordinance massage establishments are permitted uses (as a personal service) in certain commercial zoning districts including the Crocker Park, Sierra Point and Neighborhood (Brisbane Village and Downtown Brisbane) districts; and

WHEREAS, in other communities certain massage establishments have operated as a cover for illegal activities; and

WHEREAS, by requiring massage establishments in commercial zoning districts to obtain conditional use permits before operating, the City would have stronger land use controls over such uses.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRISBANE AS FOLLOWS:

1. The City Council files this Resolution of Intention to initiate the process by which the City's Zoning Ordinance may be amended by requiring conditional use permits for all massage establishments in commercial zoning districts.
2. This Resolution of Intention is referred to City staff to prepare and present to the Planning Commission for its consideration and recommendation to the City Council a report and proposed amendments to the Zoning Ordinance as described herein.
3. This resolution of intention is effective immediately upon its adoption.

Terry O'Connell

Terry O'Connell, Mayor

I hereby certify that the foregoing Resolution No. 2015-34 was duly and regularly adopted at the regular meeting of the Brisbane City Council on July 16, 2015 by the following vote:

AYES: Councilmembers Conway, Lentz, Liu, and Mayor O'Connell
NOES: None
ABSENT: None

Sheri Marie Spediacci

Sheri Marie Spediacci, City Clerk

City of Brisbane
Agenda Report

DATE: City Council Meeting of June 16, 2015

TO: Mayor and City Council

FROM: Michael H. Roush, City Attorney

SUBJECT: Resolution of Intention to Amend Zoning Ordinance Concerning Massage Establishments

PURPOSE

To consider adopting a resolution of intention to amend the zoning ordinance such that massage establishments would need a conditional use permit in order to operate in commercial zoning districts

RECOMMENDATION

Adopt the attached resolution of intention to amend the zoning ordinance as described above.

BACKGROUND

In 2014, the City Council adopted comprehensive new operational regulations concerning massage establishments, Chapter 8.10 of the Brisbane Municipal Code. Significantly, the regulations were not land use regulations in that, at the time, the State had purported to preempt most of the local land use regulations applicable to massage establishments. After the ordinance was adopted, however, the state law was changed under AB 1147 that restored local land use authority concerning massage establishments. Accordingly, cities may now impose land use regulations, such as conditional use permits, on massage businesses that are different than those imposed on other professional or personal services.

Under the City's current zoning ordinance, massage establishments are permitted uses (as a personal service) in a number of commercial zoning districts such as the Crocker Park, Sierra Point and Neighborhood Commercial (Brisbane Village and Downtown Brisbane) districts. In the Marsh Lagoon Bayfront and Southwest Bayshore zoning districts, these uses are conditionally allowed.

Because of abuses in other communities where massage establishments have operated as a cover for illegal activities, the Police Department is of the view that massage establishments should be conditionally permitted uses in all commercial zoning districts.

DISCUSSION

Section 17.50.010 of the Municipal Code provides that the process to initiate an amendment to the zoning ordinance by which a new regulation is imposed on property is by filing of a resolution of intention by the City Council. Requiring property owners within commercial zoning districts to obtain a conditional use permit in order to operate a massage establishment would impose new regulations on such property.

Accordingly, if the City Council wishes to consider adopting such regulations, attached is a resolution of intention initiating such revisions to the zoning ordinance. Those revisions would first be considered by the Planning Commission who would make a recommendation to the City Council. If those regulations were adopted, they would require new massage establishments in all commercial zoning districts to obtain a conditional use permit.

These changes, if adopted, would not, however, affect a certified massage therapist who is a sole owner, operator or employee of a business operating as a sole proprietorship operating at a fixed place of business where the place of business is a personal residence or who does not have a fixed place of business but provides "outcall massage services" at a customer's or client's location. That therapist would still need to comply with all of the regulatory requirements but would not, for example, need a conditional use permit for the therapist's personal residence. To the extent, however, a therapist does provide massage at his or her own residence, the therapist would need to obtain a home occupation permit and comply with the regulations applicable to such permit. If the business were limited to "outcall massage services" the therapist still must meet the regulatory requirements but no home occupation permit would be required and no massage services could be provided at the therapist's residence.

It should be pointed out that AB 1147 also made a number of changes to the operational requirements for massage establishments. As a result, San Mateo County drafted a model ordinance that reflects those changes. Staff has reviewed the model ordinance and compared it to the ordinance that the City Council adopted in 2014. The model ordinance is slightly more restrictive in some respects, for example, the hours of operation are somewhat more restrictive but, overall, the differences are not significant. Accordingly, given the comprehensive review Council undertook on this matter last year, it is not the best use of City resources at this time to fine tune the City ordinance to conform its operational regulations entirely to the regulations in the model.

FISCAL IMPACT

There is no fiscal impact in adopting the resolution of intention. If the zoning ordinance amendments are adopted, there will be some additional staff and planning commission time to process and consider use permits for massage establishments.

Michael Roush

Michael Roush, City Attorney

Clayton Holstine, City Manager

RESOLUTION NO. 2015-34

A RESOLUTION OF INTENTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE TO INITIATE AN AMENDMENT TO THE ZONING ORDINANCE OF THE CITY OF BRISBANE TO REQUIRE MASSAGE ESTABLISHMENTS INTENDING TO LOCATE IN A COMMERCIAL ZONING DISTRICT TO OBTAIN A CONDITIONAL USE PERMIT

WHEREAS, Section 17.50.010 of the Brisbane Municipal Code provides in part that the process to initiate an amendment to the Zoning Ordinance whereby a new regulation would be imposed on property is by the filing of a resolution of intention by the City Council; and

WHEREAS, under the City's Zoning Ordinance massage establishments are permitted uses (as a personal service) in certain commercial zoning districts including the Crocker Park, Sierra Point and Neighborhood (Brisbane Village and Downtown Brisbane) districts; and

WHEREAS, in other communities certain massage establishments have operated as a cover for illegal activities; and

WHEREAS, by requiring massage establishments in commercial zoning districts to obtain conditional use permits before operating, the City would have stronger land use controls over such uses.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRISBANE AS FOLLOWS:

1. The City Council files this Resolution of Intention to initiate the process by which the City's Zoning Ordinance may be amended by requiring conditional use permits for all massage establishments in commercial zoning districts.
2. This Resolution of Intention is referred to City staff to prepare and present to the Planning Commission for its consideration and recommendation to the City Council a report and proposed amendments to the Zoning Ordinance as described herein.
3. This resolution of intention is effective immediately upon its adoption.

_____

Terry O'Connell, Mayor

I hereby certify that the foregoing Resolution No. 2015-34 was duly and regularly adopted at the regular meeting of the Brisbane City Council on July 16, 2015 by the following vote:

AYES:
NOES:
ABSENT:

_____

Sheri Marie Spediacci, City Clerk

Home Occupations

17.44.040 - Performance standards.

No home occupation permit shall be granted unless the planning director finds and determines that the proposed activity will be conducted in compliance with each of the following performance standards as may be applicable:

A. The home occupation shall be conducted entirely within an enclosed structure; provided, however, the planning director may grant an exception to this standard if the planning director determines that the activity to be conducted outside of the structure:
   1. Shall not create a nuisance or in any way adversely affect neighboring properties or the public welfare; and
   2. Shall not create the appearance of a nonresidential use on the site.

B. A home occupation conducted in a garage shall not reduce the parking required for the building site.

C. The home occupation shall not generate pedestrian or vehicular traffic beyond that normal to the zoning district in which it is located.

D. The home occupation shall not involve employees at the site other than those who reside at the dwelling unit; provided, however, the planning director may grant an exception to this standard if the planning director determines that:
   1. Occasional trips to the site by employees who generally work off the premises do not exceed the trip generations that would normally be expected for single family dwellings; and
   2. There are sufficient parking places available for employees visiting the; and
   3. Vehicles and equipment used by employees who generally work off the premises are not stored at the site.

E. Commercial vehicles making deliveries to or from the premises shall be no larger than a step-van or similar vehicle normally used for making small package deliveries to residential neighborhoods.

F. Stock in trade may be kept on the site provided the stock in trade is sold off the premises or by limited appointment.

G. The home occupation shall not be conducted and the premises shall not be altered or used in a manner that would give the dwelling unit the appearance of a nonresidential use.

H. No mechanical or electrical equipment shall be used on the premises which causes undue noise, electrical interference, or other adverse impact upon any adjacent properties.

I. Signs for the home occupation shall comply with the regulations set forth in Chapter 17.36.

J. The home occupation shall not involve the use of any toxic, hazardous, flammable, or other material or waste that may cause a threat to the public health or safety.

(Ord. 463 § 11(part), 2002).

Chapter 8.10 - MASSAGE REGULATIONS

Sections:

8.10.010 - Purpose.

In enacting these regulations, the city of Brisbane city council (hereafter referred to as "city council") recognizes that massage is a viable, professional, healing art offering the public valuable health and therapeutic services.

It is the purpose and intent of the city council that, consistent with California Business and Professions Code Section 4600 et seq., massage establishments and persons offering massage be regulated in the interests of public health, safety, and welfare by providing minimum building, sanitation, and health standards and to ensure that persons offering massage possess the qualifications necessary to operate such businesses and to perform such services. The city council recognizes the importance of allowing members of the public to more easily identify persons and businesses offering massage services that are qualified and trained and can be expected to conduct their work in a lawful and professional manner.

In the event of any conflicts or inconsistencies between the provisions of Chapter 8.10 and the remaining provisions of Title 8 or with the provisions of any other chapter(s) of the Municipal Code, the provisions of Chapter 8.10 shall control, unless to do so would be inconsistent with the stated purpose of this chapter.

This chapter is not intended to be exclusive and compliance will not excuse noncompliance with any state or federal laws or local laws or regulations that are uniformly applied to other professional or personal service businesses including, without limitation, all zoning regulations; business license regulations; the city's building, fire, electrical, and plumbing code regulations; and health and safety laws, rules and regulations applicable to professional or personal services businesses in the city.

(Ord. No. 585, § 1, 6-19-14)

8.10.020 - Authority.

The primary responsibility for enforcement of the provisions of Chapter 8.10 shall be vested in the chief of police or his/her designee.

(Ord. No. 585, § 1, 6-19-14)

8.10.030 - Definitions.

For purposes of this chapter, the following words, terms and phrases are defined as follows:

"Applicant" shall mean an applicant for a city certificate of registration, and each of the following persons: the managing responsible officer/employee/operator, a general partner, a limited partner, a shareholder, a sole proprietor, or any person who has a five percent (5%) or greater ownership interest in a massage establishment, whether as an individual, corporate entity, limited partner, shareholder or sole proprietor.

"California Massage Therapy Council" (CAMTC) is the non-profit organization created pursuant to Business and Professions Code Section 4600 et seq. that is authorized to evaluate qualifications of massage therapists and massage practitioners and issue certification in the state of California. There are two (2) levels of certification: Certified massage therapist and certified massage practitioner.

"CAMTC certificate" means the unconditional, valid and current certificate issued by the CAMTC to certified massage therapists and certified massage practitioners pursuant to Business and Professions Code Section 4600 et seq. "CAMTC certificate" shall not include a conditional CAMTC certificate issued by the CAMTC to any certified massage therapist or certified massage practitioner.

"Certificate of registration—individual" means a certificate issued by the Brisbane police department upon submission of satisfactory evidence that a certified massage therapist or certified massage practitioner has a valid and current state certification and has satisfied all other requirements of this chapter.

"Certificate of registration—business" means a certificate issued by the Brisbane police department upon submission of satisfactory evidence that a massage establishment or sole proprietorship employs or uses only certified massage therapists or certified massage practitioners possessing valid and current state certifications and has satisfied all other requirements of this chapter.

"Certified massage therapist/practitioner" means any person holding a current and valid state certificate issued by the CAMTC pursuant to California Business and Professions Code Section 4600 et seq., and following, whether as a certified massage therapist or certified massage practitioner, as defined therein.

"City" means the city of Brisbane.

"Client" means the customer or patron who pays for or receives massage services.

"Compensation" means the payment, loan, advance, donation, contribution, deposit, exchange, or gift of money or anything of value.

"Employee" means any person employed by a massage establishment who may render any service to the business, and who receives any form of compensation from the business.

"Massage" means any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating the external parts of the human body with the hands or with the aid of any mechanical or electrical apparatus or other appliances or devices, with or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment or other similar preparations.

"Massage establishment" or "massage business" means any establishment, having a fixed place of business where any person, firm, association, partnership, corporation, joint venture or a combination of individuals engages in, conducts, carries on or permits to be engaged in, conducted or carried on for consideration, massages or health treatments in the city in which massages are given in return for compensation of any type; including but not limited to any hot tub/sauna establishment, personal fitness training center, spa, gymnasium, athletic facility, health club or office in which massage services are made available to clients. The terms "massage establishment" or "massage business" also include a certified

massage therapist/practitioner who is the sole owner, operator and employee of a massage business operating as a sole proprietorship whether at a fixed place of business or at a location designated by the customer or client through outcall massage services.

"Outcall massage" means the engaging in or carrying on of massage for compensation in a location other than the business operation's address set forth in the massage establishment's certificate of registration.

"Person" means any individual, firm, association, partnership, corporation, joint venture, limited liability company, or combination of individuals.

"Police department" means the Brisbane police department.

(Ord. No. 585, § 1, 6-19-14)

8.10.040 - Exemptions.

The provisions of this chapter shall not apply to the following classes of individuals or businesses while engaged in the performance of their duties:

A. Physicians, surgeons, chiropractors, dentists, osteopaths, nurses or any physical therapists who are duly licensed to practice their respective professions in the state of California and persons working directly under the supervision of or at the direction of such licensed persons, working at the same location as the licensed person, and administering massage services subject to review or oversight by the licensed person.
B. Barbers, cosmetologists, estheticians, manicurists and others who are duly licensed under the laws of the state of California while engaging in practices within the scope of their licenses, except that this exemption shall apply solely to the massaging of the neck, shoulders, face, scalp, hands, arms, feet and/or calves of the clients.
C. Hospitals, nursing homes, mental health facilities, or any other health facilities duly licensed by the state of California, and employees of these licensed institutions, while acting within the scope of their employment.
D. Accredited high schools, junior colleges, and colleges or universities whose coaches and trainers are acting within the scope of their employment.
E. Trainers of amateur, semi-professional or professional athletes or athletic teams while engaging in their training responsibilities for and with athletes; and trainers working in conjunction with a specific athletic event.
F. Individuals administering massages or health treatment involving massage to persons participating in single-occurrence athletic, recreational or festival events, such as health fairs, road races, track meets, triathlons and other similar events; provided, that all of the following conditions are satisfied:
    1. The massage services are made equally available to all participants in the event;
    2. The event is open to participation by the general public or a significant segment of the public such as employees of sponsoring or participating corporations;
    3. The massage services are provided at the site of the event and either during, immediately preceding or immediately following the event;
    4. The sponsors of the event have been advised of and have approved the provisions of massage services;

5. The persons providing the massage services are not the primary sponsors of the event.

(Ord. No. 585, § 1, 6-19-14)

8.10.050 - CAMTC certification required.

It shall be unlawful for any individual to engage in, conduct, or carry on, or perform massage for compensation within the city unless that individual is a certified massage therapist/practitioner with a CAMTC certificate that is in full force and effect.

It is unlawful for any business to engage in, conduct or carry on, or permit to be engaged in, conducted or carried on in or upon any premises within the city, the operation of a massage establishment or to allow any person to administer massage or function as a certified massage therapist/practitioner, unless all individuals employed by the massage business to perform massage, whether as an employee or independent contractor, are certified massage therapists/practitioners with CAMTC certificates that are in full force and effect. Massage establishments shall maintain on the premises and on file with the city copies of the CAMTC certificates held by all persons providing massage services at that business or establishment.

(Ord. No. 585, § 1, 6-19-14)

8.10.060 - City registration required.

It shall be unlawful for any individual to engage in, conduct, or carry on, or perform massage for compensation within the city unless that individual has obtained a certificate of registration — individual from the city.

It shall be unlawful for any business to engage in, conduct or carry on, or permit to be engaged in, conducted or carried on in or upon any premises within the city, the operation of a massage establishment or to allow any person to administer massage or function as a certified massage therapist/practitioner, unless the massage establishment has obtained a certificate of registration — business from the city.

(Ord. No. 585, § 1, 6-19-14)

8.10.070 - Applications for certificates of registration.

A. Submission of Application.

1. All persons who wish to obtain a certificate of registration — individual from the city, as defined by this chapter, shall file a written application submitted under penalty of perjury with the police chief on an application form provided by the city, which shall contain all of the following information:
2. If an individual, the applicant shall produce:
   a. A valid and current state certification; and
   b. A valid and current CAMTC-issued identification card.
3. If a sole proprietorship, the applicant/owner shall produce:
   a. A valid and current state certification; and
   b. A valid and current CAMTC-issued identification card.
4. If a massage establishment other than a sole proprietorship, the applicants/owners shall produce:
   a. A valid and current state certification (if they are certified); and

b. A valid and current CAMTC-issued identification card (if they are certified); and

c. A statement that the massage establishment shall employ only certified massage therapists/practitioners along with copies of valid and current state certifications for all certified massage therapists/practitioners employed or who will be employed by the massage establishment (whether as employees or independent contractors) and copies of their valid and current CAMTC-issued identification cards.

5. The application, when made by a sole proprietorship or a massage establishment, shall also include:

   a. The name, address and telephone number of the massage establishment where massage will be provided, or, where the massage establishment provides only off-premises massage, the principal address from which the business will be administered.

   b. The name, address and telephone of the owner(s) and manager(s) of the massage establishment.

   c. Contact information for the primary person in charge of the massage establishment, if different from subsection (A)(2) above.

   d. A description of the massage services to be performed by each employee or independent contractor of a massage establishment, and a recent passport size photo of that person.

   e. A complete description of all services to be provided.

   f. A statement certifying that the operation of the massage establishment as proposed by the applicant complies with all applicable state and local laws, rules and regulations, including, but not limited to all county health regulations applicable to massage services and the city's building, health, and fire safety ordinances.

6. The police department may require the owner/applicant of a sole proprietorship or a massage establishment to produce a valid and current driver's license and/or identification card issued by a state or federal governmental agency or other photographic identification bearing a bona fide seal of a foreign government; and further may require the certified massage therapists/practitioners whom the owner/applicant has identified as employees to personally appear and produce to the city valid and current state certifications, a valid and current driver's license and/or identification card issued by a state or federal governmental agency or other photographic identification bearing a bona fide seal of a foreign government.

7. If an applicant, owner or operator of a massage establishment owning five percent (5%) or more of the business is not a certified massage therapist/practitioner, then that individual is subject to a background check by the city and must submit the following additional items to the Brisbane police department in connection with his/her application for a certificate of registration.

   a. The full name, including any nicknames or other names used presently or in the past, and the present address and phone number of the applicant;

   b. The applicant's two (2) most recent addresses within the last seven (7) years, and the dates of residence at each address;

   c. The applicant's date of birth, height, weight and colors of eyes and hair;

   d. The applicant's driver's license and/or California I.D. number (if any) and Social Security number;

   e. The applicant's two (2) most recent employers within the last seven (7) years, including their names, addresses and phone numbers, and the position held by the applicant;

   f.

The names and addresses of any massage facility or other businesses involving massage by which the applicant has been employed, or self-employed as a massage practitioner and/or massage therapist, whether state-certified or not, within the past ten (10) years;

g. Any criminal convictions on the part of the applicant for offenses other than traffic violations within the ten (10) years preceding the date of the application;

h. Any criminal charges pending against the applicant at the time of the application, other than traffic citations, the name and location of the court in which the criminal charges are pending and the applicable case numbers;

i. Whether the applicant has ever had a license, certificate or permit related to the practice of massage, or the operation of a massage establishment, or other business involving the practice of massage, suspended or revoked within the ten (10) years preceding the date of the application, the dates and reasons for any such suspensions or revocations, and the name and location of the jurisdiction or public agency which suspended or revoked such license, permit or certificate;

j. Whether the applicant, as a member of a corporation or partnership, has ever operated or been employed at any business which has been the subject of an abatement proceeding under the California Red Light Abatement Law (California Penal Code Sections 11225 through 11235) or any similar laws in other jurisdictions. If the applicant has previously worked at such a business, he/she should state on the application the name and address of the business, the dates on which the applicant was employed at such business, the name and location of the court in which the abatement action occurred, the applicable case number and the outcome of the abatement action;

k. Whether the applicant had previously applied to the city for a certificate of registration, the date of the previous application and any other name(s) under which the application was made;

l. The name and address of the owner of the real property upon or in which the business is to be conducted. In the event the applicant is not the legal owner of the property, the application must be accompanied by a copy of the lease and a notarized acknowledgment from the owner of the property that a massage establishment will be located on his/her property;

m. Proof of malpractice insurance in the sum of not less than one hundred thousand dollars ($100,000.00) per certified massage therapist/practitioner employed, or to be employed, at the massage establishment up to a maximum of five hundred thousand dollars ($500,000.00); this requirement can be satisfied by malpractice insurance being provided in the name of individual certified massage therapists/practitioners or establishments;

n. Written authorization for the city, its agents and employees, to seek information and to conduct an investigation into the truth of the statements set forth in the application and into the background of the applicant;

o. An agreement by the applicant that he/she shall advise the city in writing of any change of address or change in fact(s) represented to the city which may occur during the city's processing of the application;

p. A statement under penalty of perjury that the applicant has not knowingly and with the intent to deceive made any false, misleading or fraudulent statements or omissions of fact in his/her application or any other documents required by the city to be submitted with the application; and

q. Such applicant shall be responsible for submitting fingerprints pursuant to "Livescan" procedures and pay all costs associated with such submittal. The applicant's fingerprints will then be submitted to the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) for evaluation. Upon receipt of the report from the DOJ and FBI, the police chief shall review the criminal history (if any) of the applicant.

8. All individuals, sole proprietorships and massage establishments already offering massage services in the city at the time the ordinance codified in this chapter takes effect are also required to obtain the necessary certificate of registration and comply with all of the other requirements of the chapter.

B. Other Required Information. Applicants for certificates of registration shall also submit the following information to the police chief at the time of their application:

1. A birth certificate or other legal documentation that verifies the identity of the applicant and confirms that the applicant is at least eighteen (18) years of age;
2. Other related information requested by the police chief in order to adequately evaluate the application for a certificate of registration.

C. Payment of Registration Fees. At the time of filing an original application for a certificate of registration, applicants shall pay registration fees (as applicable) in an amount established by a resolution of the city council. All fees shall be non-refundable.

D. Processing of Application and Investigation. Upon receipt of an application for a certificate of registration filed by an individual, as discussed in Section 8.10.070, the police chief shall review the application and supplementary material, if any, and shall issue a certificate of registration to the individual if the individual has provided satisfactory proof that he or she has (1) a valid and current state certification, (2) a valid and current CAMTC-issued identification card, and (3) has satisfied the other requirements of this chapter.

Upon receipt of an application for a certificate of registration filed by a sole proprietorship or massage establishment, the police chief shall review the application and supplementary material, if any. If it is clear from the face of the application and supplementary materials that the applicant is not qualified for a certificate of registration, or the application is incomplete, the application may be denied without further investigation. If it appears from the face of the application and supplementary material that the applicant may be eligible for the certificate of registration sought, the police chief shall verify the information submitted by the applicant and may further investigate as follows:

1. Investigation of Location and Premises of Massage Establishment. Upon receipt of an application for a new or existing massage establishment, the police chief shall refer the application to the city's applicable departments, which shall review the application and, if necessary, inspect the premises to ensure that the operation of the business at the designated site will comply with the provisions of this Chapter 8.10 and the city's zoning, building and fire safety standards, and any other applicable city codes, that are uniformly applied to all other individuals and businesses providing professional services. If a use permit is required for the massage establishment the applicant shall comply with the city's zoning code.
2. Additional Investigation. The police chief may conduct additional reasonable investigation in a manner authorized by law when necessary to determine whether the applicant meets the qualifications for a certificate of registration pursuant to this Chapter 8.10.

E. Grant or Denial of Application for Certificate of Registration.

1.

Time for Grant or Denial of Applications. The police chief shall grant or deny the application for a certificate of registration within thirty (30) calendar days of the applicant's submission of the application and all required supplementary material. When necessary to conduct a complete investigation of an application, the police chief may extend this time to a maximum of sixty (60) calendar days. The granting of a certificate of registration requires the massage establishment and/or practitioner to be in compliance with Title 17 of this code, as applicable.

2. Grounds for Denial of Certificate of Registration. The police chief shall deny an application for certificate of registration if any of the following circumstances exist:
   a. The application is incomplete and/or required supplementary materials are not submitted on a timely basis;
   b. The applicant does not have the required state certification;
   c. The applicant has made a false, misleading or fraudulent statement or omission of fact in his/her application or other materials submitted with the application; or
   d. The operation of the massage establishment would violate the city's zoning, building or fire regulations, or other provisions of law or the city code, that are uniformly applied to all other individuals and businesses providing professional services.
3. Additional Grounds for Denial of Certificate of Registration. In addition to the foregoing grounds for denial, in the case of an applicant, owner or operator of a massage establishment owning five percent (5%) or more of the business who is not a certified massage therapist/practitioner, the application may also be denied if any of the following circumstances exist:
   a. The applicant, including applicant as a corporation or partnership, or former employer of the applicant while the applicant was so employed, has been successfully prosecuted in an abatement proceeding under the California Red Light Abatement Law (Penal Code Sections 11225 through 11235) or any other similar laws in another jurisdiction;
   b. The applicant has been convicted of:
      i. An offense which requires registration pursuant to California Penal Code Section 290; or a violation of Sections 266h, 266i, 311 through 311.7, 314, 315, 316, 318, 647(b), 647(d), 647(f), or 647.1 of the California Penal Code, or equivalent offenses under the laws of another jurisdiction, including any other state or country.
      ii. A prior offense which involves violation of California Health and Safety Code Sections 11351 through 11354, 11358 through 11363, 11378 through 11380, or the sale of controlled substances specified in California Health and Safety Code Sections 11054, 11056, 11057 or 11058, or equivalent offenses under the laws of another jurisdiction, including any other state or country.
      iii. Any offense involving dishonesty, fraud, deceit or the use of force or violence upon another person in the last ten (10) years;
      iv. Any offense involving sexual misconduct; or
      v. For purposes of this section, a plea of "nolo contendere" may also serve as the basis for the denial of a certificate of registration because the above listed underlying offenses bear a substantial relationship to the qualifications, functions or duties of a certified massage therapist/Practitioner or massage establishment.
4.

Notice to Applicant of Grant or Denial of Application. The police chief shall give written notice to the applicant of the grant or denial of the application for a certificate of registration by certified mail or by personal service. If the application is denied, the notice shall advise the applicant of the reasons for the denial and of his/her right to appeal the decision to the city manager through the procedures set forth in subsection 5 below.

5. Appeal of Denial of Certificate of Registration to the City Manager. Upon the denial of an application for a certificate of registration by the police chief, the applicant may appeal to the city manager through the following procedures:
   a. Request for Appeal Hearing. The applicant shall file a written request for an appeal hearing, setting forth the specific grounds on which the decision of the police chief to deny the certificate of registration is contested, with the city manager's office within ten (10) calendar days of the personal service of the police chief's decision on the applicant or within ten (10) calendar days of mailing of the police chief's decision by certified mail to the applicant at the most recent home or business address of the applicant on file with the police department.
   b. Notice of Time and Place of Hearing. Upon receipt of a timely request for an appeal hearing, the city manager's office shall notify the applicant in writing of the date, time and place of the hearing before the city manager or his/her designee, which shall not be fewer than ten (10) calendar days after personal service of such written notice of hearing on the applicant or ten (10) calendar days of mailing of such written notice of hearing by certified mail to the applicant at the most recent home or business address of the applicant on file with the city.
   c. Hearing Before the City Manager or His/Her Designee. At the hearing, both the applicant and the police chief shall have the right to appear and be represented by counsel, and to present evidence and arguments relevant to the grounds on which the decision to deny the certificate of registration is appealed. The burden of proof shall be on the applicant to demonstrate that he/she meets the qualifications for a Certificate of Registration and is entitled to the issuance of such Certificate of Registration.
   d. Decision of the City Manager or His/Her Designee. Within ten (10) calendar days of the hearing, the city manager or his/her designee shall issue a written decision stating whether the decision of the police chief to deny the application is upheld or reversed, and the reasons for this determination. The decision shall be served upon the applicant by personal service or by certified mail. The decision of the city manager or his/her designee shall be final.

(Ord. No. 585, § 1, 6-19-14)

8.10.080 - Information requests.

In addition to the foregoing, the police chief may request information from the CAMTC pertaining to any individual who possesses or claims to possess a CAMTC certificate and who seeks to engage in or is currently engaged in rendering massage services in the city. The requested information may include, but need not be limited to, the current status of the individual's CAMTC certificate, any history of disciplinary action(s) taken against the individual, the home and work addresses of the CAMTC certificate holder, and any other information that may be necessary to verify facts relevant to administering the provisions of this chapter.

(Ord. No. 585, § 1, 6-19-14)

8.10.090 - Business license.

It is unlawful for any person, whether an employee or independent contractor of a massage establishment, to open or operate a massage establishment or engage in self-employment as a certified massage therapist/practitioner without obtaining and maintaining in effect a city business license and paying a business license tax.

(Ord. No. 585, § 1, 6-19-14)

8.10.100 - Operating requirements.

Unless otherwise specified herein, all massage establishments shall comply with the following operating requirements:

A. Exterior Signs. A recognizable and legible sign should be posted at the main entrance identifying the business and which clearly identifies the establishment to foot and/or automobile traffic. An additional "massage" sign need not be in addition to the primary business sign. The sign shall be in compliance with Title 17 of this code.

B. Display of Certificate of Registration. Every certified massage therapist/practitioner employed by the massage establishment shall hold a valid certificate of registration issued by the police department. The certificate of registration shall be displayed in plain view to all patrons who enter the premises. This requirement is in addition the requirements set forth in Business and Professions Code Section 4603.7, which require the holder of a state certificate to display his/her original certificate at his or her place of business and have his or her CAMTC-issued identification card on his or her person at all times while providing massage services.

C. Dressing/Massage Room. Clients of the massage establishment shall be furnished with a dressing/massage room, or private area for changing clothes.

D. Payment/Tips. All massage services shall be paid for in the reception area, and all tips, if any, shall be paid for in the reception area. Massage establishments may utilize a system where tip envelopes are provided in the treatment rooms to be utilized and deposited by the client in the reception area.

E. Alcohol Prohibited. No alcoholic beverages may be possessed or consumed on the premises of the massage establishment.

F. No Condoms. No condoms shall be kept at the massage establishment unless they are the personal property of persons on site, and they are for the individual's personal use outside the business premises.

G. Standard of dress. The holder of the Certificate of Registration or State Certification, and all other employees of the massage establishment shall remain fully clothed at all times while on the premises of the massage establishment. At a minimum, such clothing shall be made of a non-transparent material and shall not expose the buttocks, genital area or breasts of any employee or the holder of the certificate of registration. Bikini swimsuits and halter tops shall not be acceptable.

H. Operating Hours. All massage establishments shall be closed for business by no later than ten (10:00) p.m. and shall open for business no earlier than six (6:00) a.m. It shall be unlawful for any certified massage therapist/practitioner, or other employee of a massage establishment, to give or practice massage during the hours when the massage establishment is closed.

I. List of Services. A list of services available and the cost of such services shall be available in an open, public place within the premises, and they shall be described in readily understandable language. Nothing in this section shall preclude the list of services from being printed in another language in

addition to English. No owner, operator, manager, and/or responsible of a massage establishment shall permit, and no certified massage therapist/practitioner shall offer or perform, any service other than those posted.

J. Records. Every massage establishment shall keep a written record of the date and hour of each service provided; the first and last name of each patron and the service received; and the first and last name of the certified massage therapist/practitioner administering the service. Said records shall be open to inspection by city officials, limited to sworn members of the police department, city code compliance officers and representatives of the city attorney's office charged with enforcement of this Chapter 8.10. These records may not be used by the massage establishment for any other purpose than as records of service provided, and unless otherwise required by law, they shall not be provided to third parties by the massage establishment. Said records shall be retained on the premises of the massage establishment business office for a period of not less than three (3) years.

(Ord. No. 585, § 1, 6-19-14)

8.10.110 - Sanitation requirements.

A. Required Maintenance of Massage Establishments. All premises and facilities of massage establishments shall be maintained in a clean and sanitary condition and shall be thoroughly cleaned after each day of operation. The premises and facilities shall meet applicable code requirements of the city, including but not limited to those related to the safety of the structure, adequacy of the plumbing, heating, ventilating and waterproofing of rooms in which showers, water or steam baths are used.

B. Linens. All massage establishments shall provide clean, laundered sheets, towels, and other linens in sufficient quantity for use by their clients. Such linens shall be laundered after each use and stored in a sanitary manner. No common use of linens or towels shall be permitted. Heavy white paper may be substituted for sheets on massage tables, so long as such paper is used only once for each client and is then discarded into a sanitary receptacle. Sanitary receptacles shall be provided for the storage of all soiled linens.

C. Privacy Standards for Massage Rooms, Dressing Rooms and Rest Rooms. The massage establishment shall provide doors on all of its dressing rooms and massage rooms. Transparent draw drapes, curtain enclosures or accordion-pleated enclosures are acceptable in lieu of doors for dressing and massage rooms.

D. No Residential Use. No part of the massage establishment shall be used for residential or sleeping purposes. No cooking or food preparation will be allowed on the premises unless it is within an employee-only, designated kitchen area.

(Ord. No. 585, § 1, 6-19-14)

8.10.120 - Prohibited acts.

A. Touching of Sexual and Genital Parts of Client During Massage. No Certified Massage Therapist/Practitioner, or any other employee of a massage establishment, shall place either his/her hand or hands upon, or touch with any part of his/her body, a sexual or genital part of any other person in the course of a massage, or massage a sexual or genital part of any other person. Sexual and genital parts shall include the genitals, pubic area, anus or perineum of any person or the vulva or breast of a female. In the case of breast massage, female clients shall sign a written consent form, provided by the establishment and/or certified massage therapist/practitioner, prior to providing breast massage.

B.

Uncovering and/or Exposure of Sexual and Genital Parts Before, During or After Massage. No certified massage therapist/practitioner, or other employee of a massage establishment, shall uncover and/or expose the sexual or genital parts, as defined in subsection A, above, of a client or themselves in the course of giving a massage, or before or after a massage. This subsection does not prohibit a client from turning over in the course of a massage, so long as the certified massage therapist/practitioner holds a towel, sheet, blanket or other drape over the client to protect his/her genital and sexual parts from exposure.

C. Violation of provisions of this section may be charged separately as provided by State law.

(Ord. No. 585, § 1, 6-19-14)

8.10.130 - Out-call massage services.

Any certified massage therapist/practitioner who has complied with all applicable provisions of this Chapter 8.10 may provide out-call massage services to clients within the city. Such certified massage therapists/practitioners shall maintain their certificates of registration upon their persons, or within their immediate reach, at all times while performing massage in the city and shall display these upon the request of any client, police officer or code compliance officer. Such certified massage therapists/practitioners shall also have his or her CAMTC-issued identification card in his or her possession while providing massage services.

(Ord. No. 585, § 1, 6-19-14)

8.10.140 - Transfer of certificate of registration.

No certificate of registration issued pursuant to this Chapter 8.10 shall be transferred, altered in name, or assigned in any manner, whether by operation of law or otherwise, from location to location or from person to person, except that any individual possessing a valid certificate of registration shall be able to move from one employer to another without filing a new application or paying a new fee, so long as the holder of the certificate of registration notifies the police chief of the change in his/her employment within five (5) business days of their move date to the new location.

(Ord. No. 585, § 1, 6-19-14)

8.10.150 - Expiration and renewal.

A. All certificates of registration issued pursuant to this chapter shall expire annually on the anniversary of their issuance, unless revoked sooner by the police chief. Applications for renewal of a certificate of registration must be submitted to the police chief by no later than sixty (60) calendar days prior to the expiration of such certificate of registration on a form provided by the police department, which shall require the applicant for renewal to update the information contained in his/her original application. The applicant must pay the city a non-refundable renewal fee, in the amount established by resolution of the city council, at the time of filing his/her application for renewal. After investigating the application for renewal, the police chief may renew the certificate of registration if the applicant continues to meet the standards for the issuance, and none of the grounds for denial of a certificate of registration set forth in Section 8.10.070(E)(2) exist. The police chief shall give the applicant for renewal written notice of his/her decision within sixty (60) calendar days of the submission of the application for renewal to the police department by personal service of the decision on the applicant or by deposit of the decision in the United States mail by certified mail to the applicant's most recent home or business address on file with the police department. If the application is denied, the notice shall state the specific grounds for the denial and that the applicant may appeal to the city manager pursuant to the procedures set forth in Section 8.10.070(E)(4).

B. If the holder of a certificate of registration does not file a timely application for renewal at least sixty (60) calendar days before expiration of the certificate of registration, he/she shall be required to file an application for a new certificate of registration pursuant to Section 8.10.060 and to pay the applicable fees.

C. The holder of a certificate of registration (whether an individual or a business) must immediately cease all massage-related functions, as defined in this chapter and in state law, upon the expiration of their certificate of registration, whether by non-renewal, failure to timely renew, or otherwise.

(Ord. No. 585, § 1, 6-19-14)

8.10.160 - Suspension and revocation.

A. Grounds for suspension or revocation of certificate of registration. The police chief may suspend for a period of up to one year or revoke a certificate of registration, according to procedures set forth in subsection B below, if there is probable cause to believe that:

1. The holder of the certificate of registration no longer has the required state certification;
2. The holder of the certificate of registration has operated or managed the massage establishment in a manner that violates any provision of this Chapter 8.10, or other applicable city code provisions, state or federal law;
3. The holder of the certificate of registration has made a false or misleading statement or omission of fact on his/her application for a certificate of registration, or for renewal of the certificate of registration, or in any supplementary materials submitted with the application;
4. The holder of the certificate of registration is operating or managing the massage establishment in a manner that poses a danger to the health and safety of clients and/or the public, or without due regard for proper sanitation or hygiene; or
5. A non-certified owner, operator, corporation, or partner who owns five percent (5%) or more of the massage business has been convicted of a crime that would have caused denial of the certificate of registration.

B. Procedure for Suspension or Revocation of Certificate of Registration:

1. Notice to Holder of Certificate of Registration. Whenever the police chief has probable cause to believe that grounds for the suspension or revocation of a certificate of registration exist, he/she shall give the holder of the certificate of registration written notice of the alleged grounds for the proposed suspension or revocation of the certificate of registration and notify the holder of the certificate of registration of his/her right to request a hearing before the police chief or his/her designee on whether the certificate of registration should be suspended or revoked. The notice shall be served on the holder of the certificate of registration personally or by deposit of the notice in the United States mail by certified mail to the most recent home or business address on file with the police department. Said notice shall also state that if no written request for a hearing is received within ten (10) calendar days of the personal service of the police chief's decision on the applicant or within ten (10) calendar days of mailing of the police chief's decision by certified mail to the applicant, the applicant shall be deemed to have waived his/her right to a hearing.
2. Hearing before Police Chief. The hearing on the revocation or suspension of the certificate of registration, if timely requested as specified above, shall be held before the police chief or his/her designee no fewer than ten (10) calendar days after the personal service of the notice to the holder of the certificate of registration, or no fewer than ten (10) calendar days after mailing of the notice to the holder of the certificate of registration by certified mail to the most recent home or business address on file with the police department. At the hearing, the holder of the

certificate of registration and a representative of the city shall have the right to appear and to be represented by counsel, and to present evidence and arguments that are relevant to a determination of whether grounds for suspension or revocation of the certificate of registration exist.

3. Decision of Police Chief. Within ten (10) calendar days after the hearing, the police chief or his/her designee shall issue a written decision that states whether the certificate of registration is suspended or revoked, the length of any suspension, and the factual basis for the decision, and that the holder of the certificate of registration may appeal any suspension or revocation to the city manager through the procedures set forth in paragraph (4), below. The decision of the police chief shall be served on the holder of the certificate of registration by personal service or by certified mail to the certificate of registration holder's most recent home or business address on file with the police department. Said notice shall also state that if no written request for an appeal hearing is timely received, the applicant shall be deemed to have waived his/her rights to an appeal hearing.
4. Request for Appeal Hearing Before the City Manager. The holder of the certificate of registration may appeal the decision of the police chief or his/her designee by filing a written request for an appeal hearing setting forth the specific grounds on which the decision of the police chief or his/her designee is contested, with the city manager's office within ten (10) calendar days of the personal service to the holder of the certificate of registration of the police chief's decision, or within ten (10) calendar days of service of the decision by certified mail to the certificate of registration holder's most recent home or business address on file with the police department.
5. Appeal Hearing Before the City Manager. Upon receipt of a timely request for an appeal hearing, the city manager's office shall notify the holder of the certificate of registration in writing of the date, time and place of the hearing before the city manager or his/her designee which shall not be fewer than ten (10) calendar days after service of such written notice on the Certificate of registration holder by personal service, or ten (10) calendar days after mailing of the notice by certified mail to the certificate of registration holder's most recent home or business address on file with the police department. At the hearing, both the holder of the certificate of registration and the police chief or his/her designee shall have the right to appear and be represented by counsel and to present evidence and arguments which are relevant to the grounds for the appeal, as stated in the request for an appeal hearing. Within ten (10) calendar days of the hearing, the city manager or his/her designee shall issue a written decision that states whether the decision of the police chief or his/her designee is upheld, modified or reversed, and the length of any suspension. The decision shall be served on the holder of the certificate of registration by personal service or by certified mail. The decision of the city manager or his/her designee shall be final.
6. Effective Date of Revocation or Suspension. Any suspension or revocation of a certificate of registration shall become effective immediately upon the personal service of the written decision of the police chief or his/her designee, or, in the event of an appeal, the written decision of the city manager or his/her designee, on the holder of the certificate of registration, or five (5) calendar days after the mailing of such decision by certified mail to the holder of the certificate of registration.
7. Surrender of suspended or revoked certificate of registration to police chief. Upon a written decision by the police chief or his/her designee, or in the event of an appeal, by the city manager or his/her designee, which suspends or revokes a certificate of registration, the original and any

copies of the certificate of registration shall be surrendered immediately to the police chief. In the case of a suspension, the police chief shall return the certificate of registration after the period of suspension has ended.

(Ord. No. 585, § 1, 6-19-14)

8.10.170 - Criminal penalty.

Any person subject to this chapter who personally, or through an agent, employee, independent contractor or other representative, violates any material provision of this chapter shall be guilty of a misdemeanor. Any person convicted of a misdemeanor shall be subject to punishment by fine and/or imprisonment to the maximum extent permitted by state law.

(Ord. No. 585, § 1, 6-19-14)

8.10.180 - Inspections.

Massage establishments shall permit the city to conduct reasonable inspections during regular business hours to ensure compliance with state and local laws, including but not limited to this chapter and California Business and Professions Code Section 4600 et seq., or applicable fire, health and safety requirements.

(Ord. No. 585, § 1, 6-19-14)

8.10.190 - Public nuisance.

Any massage establishment operated, conducted, or maintained contrary to the provisions of this chapter shall be unlawful and a public nuisance, and the city attorney may, in the exercise of discretion, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement, removal and enjoinment thereof, in a manner provided by law.

(Ord. No. 585, § 1, 6-19-14)

8.10.200 - Responsibility of owner or operator.

The owner or operator of a massage establishment shall be responsible for the conduct of all employees or independent contractors of the business.

(Ord. No. 585, § 1, 6-19-14)

8.10.210 - Massage establishments closed due to criminal activity.

No massage establishment shall be opened at a location where a massage establishment was closed due to criminal activity for one year.

(Ord. No. 585, § 1, 6-19-14)

8.10.220 - Notifications.

A massage establishment shall immediately report to the police chief any of the following:

A. Arrests of any employees or owners of the massage establishment for an offense other than a misdemeanor traffic offense;
B. Resignations, terminations, or transfers of certified massage therapists/practitioners employed by the massage establishment;
C. Loss of CAMTC certification by any of the massage establishment's employees or independent

contractors;

D. Any intention to rename, change management, or convey the massage establishment to another person;

E. The occurrence of any event involving the massage establishment or the certified massage therapists/practitioners employed therein that constitutes a violation of this chapter or state or federal law.

(Ord. No. 585, § 1, 6-19-14)